

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 05-8 E
)	
MICHAEL KOSTENIUK)	

MOTION TO BE RESENTENCED IN ABSENTIA

AND NOW, comes the defendant, Michael Kosteniuk, by his attorney, Thomas W. Patton, Assistant Federal Public Defender, and files his Motion to be Resentenced In Absentia and in support thereof sets forth as follows:

1. Mr. Kosteniuk pled guilty to receiving child pornography and this Court sentenced him to five years of imprisonment followed by seven years of supervised release.

2. The United States Court of Appeals for the Third Circuit affirmed Mr. Kosteniuk's term of supervised release but vacated the condition of release that he not possess any materials depicting sexually explicit conduct. The case has been remanded for resentencing consistent with the Third Circuit's opinion.

3. The Court has scheduled Mr. Kosteniuk's resentencing for January 3, 2008, at 11:00 a.m.

4. After consultation, Mr. Kosteniuk has decided to waive his right to be present at the resentencing. Attached is a signed waiver by Mr. Kosteniuk waiving his right to be present at the resentencing.

5. Mr. Kosteniuk respectfully requests that this Honorable Court allow him to be resentenced in absentia.

6. The United States Attorney's Office does not oppose this motion.

WHEREFORE, the defendant, Michael Kosteniuk, respectfully requests that this Honorable Court allow him to be resentenced in absentia.

Respectfully submitted,

/s/ Thomas W. Patton

Thomas W. Patton

Assistant Federal Public Defender

PA I.D. No. 88653